

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

KIA CHEVALIER,

Plaintiff,

vs.

RAY & JOAN KROC CORPS.  
COMMUNITY CENTER, SALVATION  
ARMY RAILTON PLACE, 242 TURK  
STREET (SF), 94102-3808,

Defendants.

Case No: C 11-4891 SBA

**ORDER**

Docket 34.

Pro se Plaintiff Kia Chevalier ("Plaintiff") filed the instant action on September 30, 2011. Compl., Dkt. 1. On June 8, 2012, this Court issued an Order dismissing the complaint with leave to amend for failure to state an actionable claim. Dkt. 31. Plaintiff filed a first amended complaint ("FAC") on July 2, 2012. Dkt. 33. On July 16, 2012, Defendant The Salvation Army ("Defendant") filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. 34. Under Civil Local Rule 7-3(a), any opposition or statement of non-opposition to Defendant's motion was due no later than 14 days after the motion was filed.<sup>1</sup> This Court's Standing Orders specifically warn that "failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute a consent to the granting of the motion." Civil Standing Orders at 5, Dkt. 11. Notwithstanding the requirements of Civil Local Rule 7-3(a) and the Court's warning, Plaintiff has not filed a response to Defendant's motion.

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<sup>1</sup> However, under this rule, the Court extends by 3 days the deadline to file an opposition to a motion if the motion was not filed and served through the Court's Electronic Case Filing system. N.D. Cal. Civ. L.R. 7-3(a).

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1 A district court may properly grant a motion for failure to file an opposition. See  
2 Gwaduri v. I.N.S., 362 F.3d 1144, 1146-1147, n. 3 (9th Cir. 2004) (noting that courts have  
3 the authority to grant unopposed motions); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.  
4 1995) (the failure to file an opposition to a motion in violation of a local rule is a proper  
5 ground to grant the motion). Here, although Plaintiff's failure to file an opposition to the  
6 motion to dismiss is a proper ground to grant the motion, the Court, in light of Plaintiff's  
7 pro se status, will afford her another opportunity to file a response to the motion.

8 Accordingly, IT IS HEREBY ORDERED THAT:

9 1. Plaintiff shall file an opposition or statement of non-opposition to Defendant's  
10 motion to dismiss (Dkt. 34) by no later than ten (10) days from the date this Order is filed.  
11 In the event that Plaintiff files a timely response to the motion, Defendant shall file a reply  
12 brief by no later than seven (7) days from the date Plaintiff's response is filed. Upon the  
13 completion of briefing, this matter will be taken under submission without oral argument.  
14 The Court warns Plaintiff that the failure to timely comply with this Order will result in  
15 dismissal of this action.

16 2. The hearing scheduled for August 21, 2012 is VACATED.

17 3. Defendant shall notify the Court if Plaintiff fails to comply with this Order.

18 IT IS SO ORDERED

19 Dated: 8/9/12

20   
21 SAUNDRA BROWN ARMSTRONG  
22 United States District Judge  
23  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 CHEVALIER et al,

5  
6 Plaintiff,

7 v.

8 RAY & JOAN KROC CORPS. COMMUNITY  
9 CENTER et al,

10 Defendant.  
11 \_\_\_\_\_/

12 Case Number: CV11-04891 SBA

13 **CERTIFICATE OF SERVICE**

14  
15 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
16 Court, Northern District of California.

17 That on August 14, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said  
18 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
19 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
20 located in the Clerk's office.

21 Kia Chevalier  
22 Post Office Box 55641  
23 Hayward, CA 94545-0641

24 Dated: August 14, 2012

25 Richard W. Wieking, Clerk  
26 By: Lisa Clark, Deputy Clerk  
27  
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